

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
COMCAST CABLEVISION OF DELMARVA, INC., FOR)
A CHANGE IN ITS BASIC SERVICE RATES AND)
NECESSARY EQUIPMENT AND INSTALLATION) PSC DOCKET NO. 03-396
CHARGES IN THE UNINCORPORATED AREAS OF)
KENT AND SUSSEX COUNTIES SERVED BY THE)
GEORGETOWN HEAD-END (FILED SEPTEMBER 30)
2003 AND AMENDED NOVEMBER 10, 2003))

FINDINGS AND OPINION TO ACCOMPANY PSC ORDER NO. 6337

APPEARANCES :

On behalf of the Applicant, Comcast Cablevision of Delmarva,
Inc.:

RICHARDS, LAYTON & FINGER
BY: GLENN C. KENTON, ESQUIRE

On behalf of the Delaware Public Service Commission:

GARY A. MYERS, RATE COUNSEL
DEPUTY ATTORNEY GENERAL

On March 16, 2004, the Commission enters the following Findings and Opinion:

I. BACKGROUND

1. To repeat once again what the Commission has outlined in earlier cable television Orders, Comcast Cablevision of Delmarva, Inc. ("Comcast") has a single franchise and three systems to provide its cable television services throughout Kent and Sussex Counties and a small portion of southern New Castle County.¹ Under federally-prescribed

¹Two other subsidiaries of Comcast's ultimate corporate parent provide cable service, under other Commission-granted franchises, in the unincorporated areas of northern New Castle County as well as a portion of southeastern Sussex County.

procedures, this Commission is the local franchising authority for Comcast. As such, the Commission is empowered to regulate, under rules prescribed by the Federal Communications Commission ("FCC"), the maximum rates Comcast may charge for its basic service tier ("BST") offerings and related equipment and installation services.

2. Since 1997, Comcast has chosen to adjust its BST rates for all the areas within this single franchise area by utilizing the annual rate adjustment methodology crafted by the FCC. See 47 C.F.R. § 76.922(e). Consequently, on September 30, 2003, Comcast filed (in this single docket) separate applications to adjust its maximum permitted BST rates and equipment and installation charges for five pricing areas served by its Georgetown system.² Each application was accompanied by a separate FCC Form 1240 (BST) and FCC Form 1205 (equipment and installation) for that particular pricing area. Under the Forms 1240, the proposed maximum permitted BST rate was different for each of the five areas.³ However, because the cost-based equipment and installation charges were calculated on a regional basis, the proposed maximum charges for equipment and installation services were the same in all five FCC Form 1205s.⁴

²Since the return of cable rate regulation, Comcast has calculated separate rates for various areas served by this system within the single franchise area. In addition, in a separate docket, the Commission has previously approved annual adjustments to Comcast's maximum permitted BST rates and equipment and installation charges for the separate pricing areas served by Comcast's Dover and Salisbury systems. See PSC Findings, Opinion & Order No. 6285 (Oct. 7, 2003 & Jan. 13, 2004).

³On November 10, 2003, Comcast submitted revised FCC Forms 1240 for two pricing areas: Sussex County Unincorporated/Milford and Sussex County Unincorporated/Lewes. See Exh. 7 at 2.

⁴Governing FCC rules allow a cable operator to aggregate its equipment and installation costs on a regional basis and use such costs to determine equipment and installation charges applicable throughout that region. See 47 C.F.R. § 76.923(c). See also 47 U.S.C. § 543(a)(7)(A).

3. At Staff's direction, Comcast published notices of the proposed adjustments to its maximum permitted rates for these five areas served by its Georgetown system. See Exhs. 1A (Nov. 28, 2003) (The News Journal) & 1B (Nov. 28, 2003) (Delaware State News). The notices solicited comments concerning the proposed rate adjustments and announced that the Commission would consider the five applications during its regularly scheduled meeting on December 23, 2003. No written comments were received in response to the published notices.

4. At the hearing on December 23, 2003, the Commission Staff and Comcast introduced into the record the FCC Forms 1240 (as amended) and 1205 for the five areas. See Exhs. 2A & 2B ((Kent County Unincorporated/Milford); 3A & 3B (Sussex County Unincorporated/Milford); 4A & 4B (Sussex County Unincorporated/Georgetown); 5A & 5B (Sussex County Unincorporated/Lewes); and 6A & 6B (Sussex County Unincorporated/Seaford)). In addition, Comcast offered the oral testimony of Thomas Worley, Comcast's area director of government relations and public affairs. The Commission Staff presented the pre-filed (Exh. 7) and oral testimony of William C. Schaffer, a Staff Public Utilities Analyst. The Public Advocate did not participate and no member of the public sought to speak at the public meeting concerning these particular applications.

5. At the conclusion of the hearing, the Commission determined, from the evidence presented, that the rate adjustments sought by Comcast were consistent with the governing FCC rate methodologies. It thus entered PSC Order No. 6337 (Dec. 23, 2003) approving the proposed maximum permitted rates for BST service and installation and equipment charges for the five areas involved in this docket. The Order also set forth the operator-selected rates for BST service, equipment, and installation

services. Comcast had offered these operator-selected rates to Staff and had included those operator-selected rates (as well as the maximum permitted ones) in the public notices published by Comcast. PSC Order No. 6337 recited that the Commission would explain the reasons for its approvals in a later-filed Findings and Opinion. This is that document. The findings are based upon a record consisting of 13 exhibits and a 13-page *verbatim* transcript.

II. SUMMARY OF THE EVIDENCE

6. As noted above, here Comcast asks this Commission to approve adjustments to five separate maximum permitted BST rates related to service provided by its Georgetown system within its lower Delaware franchise. As in the past, a maximum permitted BST rate has been calculated separately for each of the five areas. Thus, under the filed FCC Forms 1240 (as amended), the new maximum permitted monthly BST rate, depending on the subscriber's location, would be:

- (a) \$21.81 (Kent Co. Uninc./Milford (CUID DE0074)) (Exh. 2A);
- (b) \$20.64 (Sussex Co. Uninc./Milford (CUID DE0076)) (Exh. 3A);
- (c) \$21.63 (Sussex Co. Uninc./Georgetown (CUID DE0076)) (Exh. 4A);
- (d) \$21.67 (Lewes Uninc. (CUID DE0076)) (Exh. 5A); and
- (e) \$21.64 (Seaford Uninc. (CUID DE0076)) (Exh. 6A).

In contrast, the new maximum permitted equipment and installation charges are the same across all of the five areas. Exhs. 2B, 3B, 4B, 5B, & 6B.⁵

7. In pre-filed testimony (later adopted at the hearing), William C. Schaffer, a Staff Public Utilities Analyst, reported that Staff had verified the financial data used by Comcast in its FCC Forms 1240 (as amended) and 1205. Staff had done so by tracing the information in the forms back to Comcast's supporting documentation. Exh. 7 at 3, 4-

6. Mr. Schaffer indicated that, in his view, Comcast had correctly applied the FCC rate regulation rules in calculating the proposed basic maximum permitted BST rates for the five areas. Similarly, he suggested that Comcast had also correctly applied the federal rules in calculating the maximum permitted equipment and installation charges applicable to all of the five areas. Exh. 7 at 6. He thus recommended that the Commission approve the proposed adjustments to the maximum permitted rates for both BST offerings, equipment, and installation services. Exh. 7 at 6. In a chart appended to his testimony, Mr. Schaffer reported that although the maximum permitted BST rate in each of the five areas would move, Comcast had chosen to charge a single operator-selected rate of \$19.05 throughout all of the five areas. Exh. 7 at Attach. pg. 1.⁶ At the same time, the proposed maximum permitted rates for equipment and installation charges would also change from last year's maximums. In some cases (unwired installations and additional separate installations), the maximum permitted would decline. In most other instances, the maximum rate would increase. In a similar fashion, the operator-selected charges for equipment and installation services would mostly increase, with the exception of decreases for unwired installations and additional separate connections. Exh. 7, Attach. pg. 2.

8. At the hearing, Thomas Worley, Comcast's director of government relations, testified that the cable company had calculated the new proposed maximum permitted rates in accord with the governing FCC regulations. He also endorsed Mr. Schaffer's pre-filed testimony, with its recommendations for approval of the proposed adjustments. Tr. 6-7. Finally, Mr. Worley explained that Comcast was moving to a single \$19.05

⁵See n. 4 above.

⁶Comcast's operator-selected rate of \$19.05 is lower than the

operator-selected BST rate not only for all these five areas within the Commission's franchise area but also for service within Sussex County municipalities exercising their own franchise authority.⁷ According to Mr. Worley, the \$19.05 rate would apply to all BST service served by this system in Sussex County. Tr. 7-8.

9. In his oral testimony, Staff Analyst Schaffer initially adopted his pre-filed written testimony. Tr. at 9-10. However, he indicated a minor discrepancy in the proposed maximum permitted equipment and installation rates. As noted, these maximums were uniform across the five areas involved in this docket. They were uniform because, according to Comcast, Comcast had calculated those rates after aggregating the relevant costs on a regional basis. See fn. 4 above. According to Mr. Schaffer, the discrepancy here arose because a maximum rate in these filings was higher than the same rate previously approved for another system within the same region. Rather than litigate the reason for such difference, Comcast agreed, in these five areas, to now "cap" the maximum rate here at the level previously approved for the other regional system. Tr. 10. With that slight caveat, Staff recommended approval of Comcast's proposed rates. Tr. 10.

III. FINDINGS AND OPINION

10. The Commission has jurisdiction over this matter. As the Commission has repeatedly said, the General Assembly has conferred upon

maximum permitted BST rates by a range of \$0.59 to \$1.76.

⁷Several years ago, this Commission began, and then terminated, an investigation into whether the provisions of 47 U.S.C. § 543(d) and 47 C.F.R. § 76.984(a) required Comcast to have a uniform BST rate in all areas of the franchise served by this system. See PSC Findings, Opinion & Order No. 5612 (Dec. 19, 2000 & Mar. 6, 2001). See also PSC Findings, Opinion & Order No. 5570 (Oct. 31, 2000 & Mar. 6, 2001) (declining to impose uniform rates for areas served by the Dover head-end system).

it the jurisdiction to implement federal regulations or legislation concerning the provision of cable television service. 26 Del. C. § 605(b). Since the return of federal BST cable rate regulation in 1993, the Commission has been certified as the local franchising authority for the franchise held by Comcast covering New Castle, Kent, and Sussex Counties.

11. The Commission approves the proposed maximum permitted rates for BST service as set forth in the five FCC Form 1240s (Exhs. 2A, 3A, 4A, 5A, & 6A) filed in this docket. According to Staff's written and oral testimony, those new maximum permitted BST rates were calculated in a manner consistent with the FCC's rate regulation rules under the annual rate adjustment methodology. See 47 C.F.R. § 76.922(e). Similarly, based on Staff's testimony, the Commission approves the maximum permitted rates for equipment and installation charges set forth in the FCC Forms 1205 filed for the five areas. Again, according to Staff's testimony, those rates - calculated on a region-wide basis - have been determined in accordance with the FCC's rate rules applicable to equipment and installation charges. See 47 C.F.R. § 76.923. The Commission is heartened by the fact that Comcast has now moved to a single operator-selected BST rate throughout this particular system and that such rate is lower than the maximum BST rate in any of the five areas.

12. These Findings and Opinion shall be filed with PSC Order No. 6337 (Dec. 23, 2003).

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary